

BEFORE THE  
DIVISION OF LICENSING  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement  
of Issues Against:

JOSEPH KOMAROV  
12227 Brook Valley Drive  
Houston, Texas 77071

Respondent.

NO. A-449

L-34887

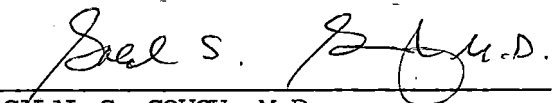
DECISION

The attached Proposed Decision of the Administrative Law Judge  
is hereby adopted by the Division of Licensing of the Board of Medical  
Quality Assurance as its Decision in the above-entitled matter.

This Decision shall become effective on April 10, 1986.

IT IS SO ORDERED March 11, 1986.

DIVISION OF LICENSING  
BOARD OF MEDICAL QUALITY ASSURANCE



GALAL S. GOUGH, M.D.  
President

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PROPOSED DECISION

This matter came on regularly for hearing before Marguerite C. Geftakys, Administrative Law Judge of the Office of Administrative Hearings, State of California, at Los Angeles, California on November 26, 1985 at the hour of 9:00 a.m. Marilyn Levin, Deputy Attorney General, represented the complainant. Respondent Joseph Komarov appeared in person and was represented by Arthur Goldberg, Attorney at Law. Evidence both oral and documentary having been received and the matter argued and submitted, the Administrative Law Judge finds the following facts:

I

Complainant, Kenneth J. Wagstaff, is the Executive Director of the Board of Medical Quality Assurance of the State of California (hereinafter the "Board") and made and filed the Statement of Issues herein solely in his official capacity.

II

On August 31, 1984, the Division of Licensing of the Board (hereinafter the "Division") received an updated application for a written examination for Joseph Komarov (hereinafter "Respondent").

III

On November 6, 1984, the Board informed respondent that he had qualified for the written examination. Thereafter, respondent took the December 1984, Federation Licensing Examination

(hereinafter referred to as "FLEX"). Respondent was ejected from the examination on the grounds of cheating. Respondent then requested a hearing.

#### IV

On December 5, 1984, during a twelve to fifteen minute period, respondent raised up out of his chair about two inches, turned his head to the left and looked for a few seconds at the examination material of the examinee seated to his immediate left, and then marked his own answer sheet. Respondent repeated the afore described action twice thereafter by looking at the examination materials once again to his left and again to his right. On the third occasion, respondent was ejected from the examination. Respondent's conduct was observed by two examination proctors. Respondent's attempt to copy the answer or check his against those of his fellow examinees would be cause for respondent being removed from said examination.

#### V

Respondent was fully aware that his copying from or looking at the examination book or paper of another examinee would result in summary ejection if such conduct were observed by a member of the Board's staff. The program manager for the Division of Licensing of the Board gave a lengthy security briefing as a preliminary to the actual taking of the examination by the eight hundred examinees. Said briefing included verbatim reading of a certification which respondent signed on December 4, 1984, prior to taking the examination and included the following language:

"3. . . . Any examination candidate observed by Board's staff engaged in any of the following types of conduct will be immediately and summarily ejected: (1) Copying from or looking at the examination book or paper of another applicant. . . ."

#### VI

Respondent contends he was stretching or exercising his back which was injured in an automobile accident on August 6, 1984 and denies he was cheating by looking at or attempting to look at the examination material of other examinees. While it is true respondent suffered a back injury in August of 1984, respondent failed to establish that he was stretching or exercising, and nothing more. It was clearly established by the facts that respondent was cheating.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Grounds for the denial of respondent's application for a physician's and surgeon's certificate exists pursuant to the provisions of Business and Professions Code Section 480, subsections (a)(2) and (a)(3), 496(b) and 2234(e) in that respondent committed acts of dishonesty, fraud, and deceit with the intent to benefit himself and which acts are substantially related to the qualifications, functions, and duties of a physician or surgeon.

II

Grounds for the denial of respondent's application for a physician's and surgeon's certificate exists pursuant to the provisions of Business and Professions Code Section 2221 in conjunction with Section 2234 of said Code by reason of respondent's unprofessional conduct in that he has committed an act involving dishonesty which is substantially related to the qualifications, duties, and functions of a physician and surgeon.

III

Grounds for the denial of respondent's application for a physician's and surgeon's certificate exists pursuant to the provisions of Business and Professions Code Section 496 by reason of respondent's attempt to subvert the licensing examination.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The ejection of Joseph Komarov from the Federation Licensing Examination was reasonable and for good cause.
2. The application of Joseph Komarov for a physician's and surgeon's certificate is hereby denied.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on November 26, 1985, at Los Angeles, California, and recommend its adoption as the decision of the Division of Licensing, Board of Medical Quality Assurance.

DATED: *January 8, 1986*

*Marguerite C. Geffarys*  
MARGUERITE C. GEFFARYS  
Administrative Law Judge  
Office of Administrative Hearings

MCG:mh

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of the State of California

2. MARILYN H. LEVIN,  
Deputy Attorney General

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Los Angeles, California  
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5. Attorneys for Complainant

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8. BEFORE THE  
DIVISION OF LICENSING  
9. BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
10. STATE OF CALIFORNIA

11. In the Matter of the Statement ) No. A-449  
of Issues Against: )  
12. ) STATEMENT OF ISSUES  
JOSEPH KOMAROV )  
13. 12227 Brook Valley Dr. )  
Houston, Texas 77071 )  
14. )  
Respondent. )  
15. \_\_\_\_\_ )

16. Complainant alleges as follows:

17. 1. Complainant, Kenneth J. Wagstaff, is the  
18. Executive Director of the Board of Medical Quality Assurance of  
19. the State of California (hereinafter the "board") and makes and  
20. files this statement of issues solely in his official capacity.

21. 2. On or about August 31, 1984, the Division of  
22. Licensing of the board (hereinafter the "division") received an  
23. updated application for a written examination for Joseph Komarov  
24. (hereinafter "respondent"). On or about November 6, 1984, the  
25. board informed respondent that he had qualified for the written  
26. examination. Thereafter respondent took the December 1984 FLEX  
27. examination. Respondent was ejected from the examination for

1 cheating. Respondent then requested a hearing.

2 3. Business and Professions Code section 480,  
3 subdivision (a)(2), provides that a board may deny a license  
4 regulated by the Business and Professions Code on the ground  
5 that the applicant has done any act involving dishonesty, fraud  
6 or deceit with the intent to substantially benefit himself or  
7 another or substantially injure another. (All sectional  
8 references herein are to the Business and Professions Code  
9 unless otherwise noted).

10 4. Section 480, subdivision (a)(3), provides that a  
11 board may deny a license regulated by the Business and  
12 Professions Code on the ground that the applicant has done any  
13 act which if done by a licentiate of the profession in question  
14 would be grounds for suspension or revocation of license.

15 5. Section 496, subdivision (b), of the code  
16 provides that a board may deny, suspend, revoke or otherwise  
17 restrict a license on the ground that an applicant or licensee  
18 has subverted or attempted to subvert any licensing examination  
19 or the administration of an examination, including, but not  
20 limited to conduct which violates the standard of examination  
21 administration; copying answers from another examinee or  
22 permitting one's answers to be copied by another examinee.

23 6. Section 2221 provides that the division may deny  
24 a physician's and surgeon's certificate to any applicant guilty  
25 of unprofessional conduct and for that purpose shall exercise  
26 all the powers granted in the Medical Practice Act.

27 /

7. Section 2234 provides that unprofessional conduct includes but is not limited to (e) the commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

8. Respondent's application for a physician's and surgeon's certificate is subject to denial pursuant to sections 480 (a) (2) and (a) (3), 496(b) and 2234(e) in that he has committed acts of dishonesty, fraud or deceit with the intent to benefit himself and which acts are substantially related to the qualifications, functions or duties of a physician or surgeon. The circumstances are as follows:

A. On December 4, 1984, respondent signed a document that he read, understood and would comply with the rules of the Division of Licensing, Board of Medical Quality Assurance regarding examination conduct. The document stated that if respondent was observed by Board Staff looking at the examination book or paper of another applicant then respondent would be immediately and summarily ejected for cheating.

B. On or about December 5, 1984, during the written examination, respondent cheated by repeatedly examining the answer sheet of the examinee on the left and right of respondent.

C. Respondent was thereupon ejected from the examination.

1           WHEREFORE, complainant prays that the division hold  
2 a hearing in the matters alleged herein and following said  
3 hearing issue a decision:

- 4           1. Denying respondent's application for licensure;  
5 and  
6           2. Taking such other and further action as the  
7 division deems proper.

8           DATED:       August 15, 1985

9  
10                               *K. Wagstaff*  
11                               KENNETH J. WAGSTAFF  
12                               Executive Director  
13                               Board of Medical Quality Assurance  
14                               State of California

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27                               Complainant